KAREN V. CLAUSEN

IBLA 2001-45 Decided April 13, 2004

Appeal from a notice of non-compliance issued by the Palm Springs-South Coast Field Office (California), Bureau of Land Management, determining that occupancy of the Oversight Extension No. 1 lode mining claim, CAMC 272089, was not in compliance with regulations at 43 CFR Subpart 3715 and ordering claimant to remove personal property from and vacate and reclaim the public lands. (CACA 40954.)

Affirmed in part; set aside and remanded in part.

1. Mining Claims: Surface Uses--Surface Resources Act: Occupancy

   The Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars use of an unpatented claim located under the mining laws for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." A mining claimant has no right to use or occupy the surface of a mining claim site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

2. Mining Claims: Surface Uses--Surface Resources Act: Occupancy

   Under the authority of 43 CFR 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a mining claim site where no observable work or use reasonably incident to mining is taking place.

APPEARANCES: Karen V. Clausen, Saugus, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Karen V. Clausen appeals a September 11, 2000, Notice of Non-Compliance issued by the Field Manager, Palm Springs-South Coast Field Office (California), Bureau of Land Management (BLM), informing her that her residency on the Oversight Extension No. 1 lode mining claim, CAMC 272089, was not in compliance with regulations governing use and occupancy of mining claims at 43 CFR Subpart 3715. The Field Manager ordered Clausen to remove certain personal property within 30 days, to vacate the public lands within 90 days (including the removal of all structures), and to reclaim the site within 120 days.

The record indicates that BLM contacted Clausen by telephone on February 28, 1998, to discuss her use and occupancy of a mining claim on the Aqua Dulce site in Tick Canyon, Los Angeles County. BLM followed up on the conversation by letter to Clausen dated March 10, 1998. Referring to the prior telephone conversation, BLM noted that Clausen had explained that her "current mining activity was non-mechanized and casual in nature," and asked Clausen to explain her position that casual mining justified residency on the site in accordance with the regulations at 43 CFR Subpart 3715. A conversation record in the case file reflects that Clausen called BLM on April 11, 1998, to discuss the occupancy issue, stating that "she felt her structures were grandfathered in at the time she bought the claims and therefore were not an issue now."

BLM sent a second request by letter dated June 3, 1998. This letter identified the location of the Aqua Dulce site in sec. 28, T. 5 N., R. 14 W., San Bernardino Meridian, Los Angeles County. In that second request, BLM confirmed that it had never approved any structures on this land, advised Clausen again of the requirements of 43 CFR Subpart 3715, and afforded her another 60 days in which to produce written documentation showing that her occupancy was authorized. The record indicates that Clausen communicated with BLM on August 3, 1998, to discuss the issue, and obtained an extension of that deadline. (Aug. 5, 1998, Conversation Record.)

On August 10, 1998, Clausen filed a notice of operation for the Oversight Extension No. 1, which she identified incorrectly as CAMC 265250. She submitted no proof of authorization for her occupancy. On an accompanying map of the claim site, she identified a structure within the confines of the claim as "historic mining cabin/mining office" and fencing along the western boundary and partly across the northern boundary "to facilitate public safety and protect from vandalism." In her description of planned mining and related activity, she discussed road repair, overburden removal, ore excavation, a processing plant, and fencing around the

entire claim. She asserted a plan to remove gold, silver, and "rare earths, hydrothermal/oil, natural gas." (Aug. 10, 1998, mining plan/notice.)

By notice dated August 20, 1998, BLM acknowledged receipt of the notice of proposed mining activity and what it identified as a "request for use and occupancy of lode mining claim CAMC 272089." BLM instructed Clausen that it needed more information regarding overburden removal and the processing plant; advised her that geothermal, oil, and gas resources that she had targeted for exploration are not locatable under the Mining Law, but rather are leasable under other statutory authority; and addressed her lack of supporting evidence of authorized occupancy. BLM stated that, "lacking a response from you concerning this information, your proposal to occupy is considered unnecessary and undue degradation of public land and is unacceptable as submitted." BLM again identified prohibitions regarding certain use and occupancy activities under 43 CFR 3715.6 and penalties for violations.

On August 24, 1998, Clausen submitted an amendment to her mining plan/notice of operations. In this document, she asserted that the "surface apex discloses graphite vein" and that it was her "intent at this time to sculpt adjacent to the shaft a flat working area sufficient to locate a winch in order to remove the muck presently located in shaft to further reveal the size and extent of the graphite vein." (Amendment to Preliminary Notice #3802 of Intent.)

In a letter submitted to BLM on August 26, 1998, in response to previous letters from BLM, Clausen explained her occupancy as follows:

> Because of the remoteness, possibility of fire and extremely high inciden[ce] of robbery, theft, breakins and undue degradation, * * * a caretaker is necessary while engaged in exploration, research, mineral surveying, mapping, sampling and assaying, as well as mining of graphite ore.
>
> My mining office is reasonably incident to my mining company Fairchild East Graceful Diversified Mine and Development Company and is used to store mining tools and equipment, maps, charts, assay reports, samples of ore, mining books, and other mining articles.
>
> The mining office pre-existed before my purchase of the claim from George Reedy, claimant for over twenty years and my subsequent filing on the claim in Sacramento with BLM.

> Mr. Reedy, a California licensed contractor, told me the historic, original cabin/mining office was built in the 1920's or 1930's, meaning that the structure pre-existed the formation of the Bureau of Land Management in 1946 and no permission was required at the time of building. Nor were any permits required on federal land by Los Angeles County at that time.

(Aug. 26, 1998, filing at 2-4.) In a subsequent response, Clausen further remarked:

> In October of 1990 when asked by George Reedy, the former claimant to caretake, maintain and oversee his claim and equipment, I was not aware that permission was required from BLM. I purchased the claim from Mr. Reedy, erected my monument, filed appropriate paperwork and filed all fees. I was also not aware that permission was required from BLM. As I am actively mining in good faith I would like permission to occupy my claim.

(Sept. 9, 1998, filing at 2-3.)

The record indicates that on September 21, 1998, Clausen submitted a series of questions to BLM regarding the occupancy. This document is not contained in the record. In a response dated November 24, 1998, the Acting State Director, BLM, recited and addressed nine questions. In response to question 8, in which Clausen queried BLM as to what she was doing that was illegal, he stated:

> The Palm Springs-South Coast Field Office acknowledged your mining notice on August 20, 1998. However, the Field Office continues to wait for your response to their letters and phone calls of March 10, June 3, August 5, and August 20, 1998. They must see your authorization for structures on your mining claim as well as proof of permits you might have regarding your compliance with [local codes and safety standards.] Lacking a response from you concerning this information, your proposal to occupy is considered unnecessary and undue degradation of public land and is in violation of Federal and State regulations.

(Nov. 24, 1998, Letter at 3.) This letter also explained to Clausen the confusion over the serial number for the mining claim. [1/]

[1/] A location notice for the Oversight No. 1 Extension mining claim was first recorded with BLM on Oct. 22, 1979, and serialized as CAMC 57220. That location (continued...)

BLM conducted site inspections on December 19, 1998, and April 4, 2000. During both inspections, BLM documented with photographs considerable trash, junk, refuse, lumber, furniture, oil drums, and what appear to be inoperable motor vehicles and boats on the site. The photographs also show a garden and a fenced-in horse.

Following the April 4, 2000, site visit, BLM Ranger Toovey, who had been accompanied by a Supervisory Ranger and the Lands and Minerals Branch Chief, prepared an Investigation Report. Therein, he highlighted his observations for both visits.

> In my two visits to the Clausen mining site, I have seen nothing that indicates mining activity on any regular or consistent basis. Of the property items located on the claims, I cannot detect any that is reasonably incident to mining. Most of the property items are dilapidated and not currently operable. It appears Clausen is using the mining site for the purpose of residence, and storage of property derived for/from other pursuits.

(Report at 4.) The Report also states that "the actual mining sites themselves appeared unchanged" between the two visits over a year apart. Id. at 3. The Report was corroborated by an inspection report, prepared by the Branch Chief. [2/]

The inspections led to the September 11, 2000, decision. There, BLM addressed six issues implicated by the occupancy and arising under 43 CFR Subpart 3715. Asserting a violation of 43 CFR 3715.2 with respect to conditions under which public lands may be occupied under the mining laws, BLM stated: "There is no evidence of recent mining on your mining claim. The two old workings within your

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[1/] (...continued)
was deemed abandoned and void by operation of law. Clausen filed a quitclaim deed for the claim from George Reedy on Mar. 17, 1995, along with a relocation notice. That relocation, serialized CAMC 265250, was deemed forfeited for failure of the claimant to satisfy the statutory maintenance fee requirements on Aug. 31, 1995. Clausen filed a third notice of relocation on Apr. 30, 1997, which was assigned a new serial number, CAMC 272089.

[2/] BLM employees present at the second visit state that they met Clausen as "she was en route to work." (Branch Chief Site Inspection Report at 1; Investigation Report at 2.) They informed Clausen of the inspection and suggested that she accompany them. She returned with them to the claim, unlocked the gate across the roadway leading to the mine site, and then departed for work. Id.

claim lack any signs of recent surface disturbance. One of the two workings is also flooded with groundwater. In addition, no mining equipment was in evidence anywhere on the claim." (Decision at 2, Finding A.) Asserting a violation of 43 CFR 3715.2-1, BLM stated: "There is no evidence that occupancy of this mining claim is justifiable to protect valuable minerals or mining equipment from theft or loss, to protect the public from hazardous mining equipment if left unattended, or that surface workings present a substantial threat to public safety." (Decision at 3, Finding B.) Citing 43 CFR 3715.6 with regard to occupancy, BLM stated: "An occupied residence and ancillary structures were observed on this mining claim. This residence and related structures are not authorized by the BLM and are determined to be not incident to mining." (Decision at 3, Finding C.) BLM cited 43 CFR 3715.6 as proscribing animal maintenance or pasturage and remarked: "A horse and corral as well as two dogs were observed on your mining claim [which] is not reasonably incident to mining." (Decision at 3, Finding D.) BLM stated that 43 CFR 3715.6(g) proscribes the placing, constructing, or maintaining of fences or signs intended to exclude the general public without BLM concurrence, and stated: "A red lettered 'no trespassing' sign was observed in proximity to your residence." (Decision at 3, Finding E.) Citing 43 CFR 3715.6(h) and (j), BLM stated: "A very large amount of junk and refuse, as well as travel trailers, large truck trailers, several apparently inoperable vehicles, and numerous other materials were observed being placed on and stored on this mining claim. None * * * [is] mining related. * * * In addition, these materials create a fire and safety hazard as well as a public nuisance." (Decision at 4, Finding F.)

Concluding that Clausen's use and occupancy was not in compliance with the applicable regulations in 43 CFR Subpart 3715, BLM ordered compliance within 30 days of receipt with the following conditions:

1. Remove from these public lands all "no trespassing" and similar signs that restrict public access.

2. Remove all horses and horse corrals from these public lands.

3. Remove all travel and truck trailers as well as all inoperable motor vehicles from these public lands.

4. Remove all boats, junk and refuse from these public lands.

5. Submit to this BLM office a proposed plan and schedule for permanently vacating these public lands. This plan and schedule shall include:

a. provisions for completely vacating these public lands within a total of 90 days from receipt of the Notice of Noncompliance including removal of all remaining personal property, structures, materials and refuse.

b. a listing of all planned site reclamation measures including ripping and recontouring of existing roads and disturbed areas.

c. provisions for complete reclamation of these public lands within 120 days of receipt of this Notice of Noncompliance.

(Decision at 4.)

Clausen timely appealed and requested a stay of BLM's decision but remarked that she did not know whether reasons were required at that time. While granting appellant an extension in which to file a statement of reasons for her appeal, the Board reminded her that it was her responsibility to present reasons justifying a stay under 43 CFR 4.21(b). (Jan. 10, 2001, Order.) [3/] Clausen did not further argue in favor of a stay and none was granted.

In her statement of reasons for appeal (SOR), Clausen responds to each of BLM's six assertions of violation.

> Paragraph A: The graphite vein on which I work with pick and shovel requires no excavation. I excavate a gunny sack full of graphite at a time so I have no mechanical equipment on the claim.
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> Paragraph B: [T]he vein of graphite is nearly in the surface with easy access for anyone to remove the mineral would seem to me to be reason enough to be present on the claim, i.e., live on the claim just to protect my graphite.
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> Paragraph C: * * * I again reference Mineral Survey No. 6616 of April 16, 1957 which is an assessment report to [BLM] of work that has transpired on the claim indicating that the cabin was located on the claim at that time.

[3/] Where a party seeking a stay fails to establish that there is sufficient reason for one by proving each element espoused in 43 CFR 4.21(b), the stay cannot be granted. See Clay Worst, 128 IBLA 165, 166 (1994); Jan Wroncy, 124 IBLA 150, 151-52 (1992).

Paragraph D: I am enclosing a photocopy of a photograph of myself standing in a washout of the only road leading to my claim which I have access to at this time. This washout occurred in 1998. At that time, I got the horse so that I could have transportation in and out during the rainy season when the road washes out. * * *

> Paragraph E: As far as the No Trespassing sign, goes, I thought it was just prudent to protect myself and my things as I work part-time as a waitress and am gone from the cabin several hours a week to earn enough money waitressing to help supplement my mining.
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> Paragraph F: Guilty. There is a lot of stuff on the claim. The vehicles, trailers, etc. belonged to George Reedy, whom I purchased the claim from and I allowed him to leave them there. Mr. Reedy passed away in November of 2000. I am working with his family in Wisconsin to facilitate their removal.

(SOR at 1-2.)

Clausen attaches a copy of Mineral Survey No. 6616, dated April 16, 1957, which shows that the claim was originally located on July 16, 1935, and that a cabin existed thereon at the time of survey in 1957. Appellant claims that the cabin had been continuously occupied from the 1950s by her predecessors until she began occupancy in 1990. She states that she has lived in the cabin for the past 10 years, living and working on the claim for 5 years and then purchasing it in 1995. She explains with regard to mineral activity: "While the claim contains many valuable minerals, I have concentrated on an open vein of graphite which is the easiest mineral of any value for me to remove as I am not in a position at present financially to purchase the heavy equipment required to develop the underground more valuable minerals." (SOR at 1.)

[1] Section 4(a) of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), provides that claims located under the mining laws of the United States "shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto." Effective August 16, 1996, the Department adopted 43 CFR Subpart 3715 to implement those statutory provisions and to address the unlawful use and occupancy of unpatented mining claims or millsites for nonmining purposes. See 61 FR 37115, 37116 (July 16, 1996). The regulations set forth restrictions on the use and occupancy of public lands open to the operation of the mining laws, limiting such use and occupancy to those involving prospecting or exploration, mining, or processing operations and uses reasonably incidental to such activities. They also

establish procedures for beginning occupancy, standards for reasonably incidental use or occupancy, prohibited acts, and procedures for inspection and enforcement, and for managing existing uses and occupancies. Id.; Jay H. Friel, 159 IBLA 150, 156-57 (2003); Bradshaw Industries, 152 IBLA 65, 67 (2000). Additionally, the regulations clarify that unauthorized uses and occupancies on public lands are illegal uses that *ipso facto* constitute unnecessary or undue degradation of public lands. 61 FR at 37117-18; David J. Timberlin, 158 IBLA 144, 151 (2003). [4/]

Activities justifying occupancy of a mining claim must (a) be "reasonably incident" to mining activity; (b) constitute substantially regular work; (c) be reasonably calculated to lead to the extraction and beneficiation of minerals; (d) involve observable on-the-ground activity that BLM may verify; and (e) use appropriate equipment that is presently operable. 43 CFR 3715.2; James R. McColl, 159 IBLA 167, 178 (2003). The regulations define "reasonably incident" as "prospecting, mining, or processing operations and uses reasonably incident thereto." 43 CFR 3715.0-5, citing 30 U.S.C. § 612 (2000). [5/] The term "includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities." Id.; Patrick Breslin, 159 IBLA 162, 166 (2003).

[2] The burden of proving that activities on a mining claim are reasonably incident to mining is on the claimant. Thomas E. Swenson, 156 IBLA 299, 310 (2002); David J. Flaker, 147 IBLA 161, 164 (1999). Clausen's statements regarding her activities on the claim and the need for occupancy are uncorroborated, and refuted by the evidence collected in BLM's field examinations. The case file demonstrates with narratives and pictures that appellant does not have an occupancy which meets any of the criteria in 43 CFR 3715.2. No activities relating to development of mineral resources are evident on this claim, and Clausen's own comments in the record demonstrate a search for a mineral-related activity to justify her living on the claim, given that she was unable to identify the mineral she was

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[4/] The Secretary of the Interior is mandated by law to take any action necessary to prevent unnecessary or undue degradation of the public lands. See 43 U.S.C. § 1732(b) (2000); see also Firestone Mining Industries, Inc., 150 IBLA 104, 109 (1999); David J. Timberlin, 158 IBLA at 151.

[5/] In addition, 30 U.S.C. § 625 (2000) provides that all mining claims and millsites located on public lands "shall be used only for the purposes specified in section 621 of this title and no facility or activity shall be erected or conducted thereon for other purposes." See James R. McColl, 159 IBLA at 177.

allegedly mining after multiple requests by BLM. The record shows that operations have been essentially nonexistent. Accordingly, Clausen has not demonstrated that she was engaged in mining operations on the claim to which her occupancy was related. Her activities on the claim do not "constitute substantially regular work," 43 CFR 3715.2(b), or "involve observable on-the-ground activity that BLM may verify." 43 CFR 3715.2(d). It is no defense that appellant hopes or expects to commence mining operations in the future. See Bradshaw Industries, 152 IBLA at 64.

The extent of permissible occupancy is directly related to the extent of mining activity conducted on the claim – the structures and equipment maintained on site must be related to and commensurate with the operations. John B. Nelson, 158 IBLA 370, 379 (2003); David E. Pierce, 153 IBLA 348, 358 (2000); Bradshaw Industries, 152 IBLA at 63. Clausen argues at most that she has engaged in "work with pick and shovel [which] requires no excavation * * * or mechanical equipment on the claim." However, 43 CFR 3715.2(d) specifically requires that those activities that are the reason for occupancy must "involve observable on-the-ground activity that BLM may verify." Without observable evidence of mining activity commensurate with the need for a cabin, such occupancy is not justifiable. Patrick Breslin, 159 IBLA at 166; Jay H. Friel, 159 IBLA at 159. Clausen's failure to explain why she needs to live on the mining claim to conduct at most random pick and shovel work defeats her argument. Consequently, the presence of structures and items on the site constitute unnecessary or undue degradation of the public lands and resources which must be avoided under 43 CFR 3715.5(a). See Wilbur L. Hulse, 153 IBLA 362, 370 (2000).

Further, BLM regulations make clear that even if BLM were able to verify the sort of pick and shovel activity Clausen contends she has engaged in, this activity would not justify the occupancy of a dwelling or any of the trailers and vehicles on the site. The dwelling is a permanent structure as defined in 43 CFR 3715.0-5. The rule at 43 CFR 3715.5 establishes "what standards apply to * * * use or occupancy," and specifically at subsection (d) addresses the appropriateness of permanent and temporary structures during the prospecting and exploration stage of mining.

> If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or exploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(Emphasis added.) Clausen concedes that she has confined her mining to surface exploration activities with a pick and shovel. Thus, at most she could justify "temporary structures" which would be allowed only during the period of mining activity.

Clausen appears to believe that the fact that the occupancy activities at issue, particularly the dwelling where she lives, preexisted the governing regulations, allows her to grandfather her use and occupancy, even if non-compliant. The regulations expressly addressed this issue. In 43 CFR 3715.4, "What if I have an existing use or occupancy," the Department has provided notice of the procedures a claimant with preexisting uses and occupancy must follow:

> (a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under Sec. 3715.7-1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.
>
> (b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:
>
> (1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and
>
> (2) BLM has no pending trespass action against you concerning your occupancy.

See, e.g., David J. Timberlin, 158 IBLA at 152-53. Clausen did not notify BLM of her occupancy in a timely manner, nor did BLM confirm that those uses and occupancy were approved. Regardless, an August 1997 deadline was imposed for existing uses and occupancy to comply with the applicable standards and thereafter those standards became applicable to her activities on the public lands.

We find nothing in the record to suggest that Clausen's activities conform to the requirements of the Surface Resources Act or its implementing regulations. In fact, it appears that Clausen purchased the mining claim from another person for purpose of living in a house on it with her pets. She was apparently unaware that

mining claims are to be used for mining activities, and that Federal statute prohibits their use for strictly personal use. The evidence from the record shows that she has not actually used the claim for any sort of mining activity. Rather, she is using Federal land as a home for herself and her pets, and a deposit for vehicle parts and other unused items. She has failed to meet her burden of proof to show her use and occupancy is reasonably incident to the mining purposes for which mining claims may be located under the Mining Laws of the United States.

Where a mining claimant is unable to establish that his or her activity meets the criteria expressed in 3715.2, BLM may order a suspension or cessation of the occupancy, 43 CFR 3715.4-3(a) and 3715.7-1, and may order the land to be reclaimed and specify a reasonable time for completion of reclamation. See 43 CFR 3715.4-3. Accordingly, BLM's order to cease occupancy and properly reclaim the claim at issue is a reasonable implementation of the regulations.

However, in affirming BLM's conclusion that Clausen's use and occupancy are not reasonably incident and therefore not permitted under the Surface Resources Act, we must set aside and remand BLM's Notice of Noncompliance to the extent it directs Clausen to remove the structures existing on the claim at the time of its acquisition. Clausen asserts that the dwelling was "grandfathered" in some respect because it was constructed in the 1930s before she acquired the mining claim. [6/] In James R. McColl, 159 IBLA at 179, we held that a claimant who entered an abandoned mill site which contained property left behind by others was not responsible to reclaim a building which was abandoned and pre-existed his occupancy. Our decision in McColl reflected a concern with the proper construction of the regulations requiring a claimant to remove buildings constructed and left on a mining claim. The rule at 43 CFR 3715.5-1 establishes that at the end of an occupancy, BLM may order a claimant to remove such property "placed on the public lands during authorized use and occupancy." See also 43 CFR 3715.5(d) and (e), 3715.5-2. We expressed concern in McColl that the Subpart 3715 rules did not adequately cover the situation in which a claimant occupied buildings left by a predecessor. 159 IBLA at 181-82.

In this case, it is unclear whether Clausen owns the building or buildings constructed approximately 70 years ago on the mining claim. The deed which Clausen purported to receive from her predecessor is not in the record. We set aside and remand this portion of the decision for BLM to determine the facts with respect to the ownership of the dwelling and other personal property. BLM must also

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[6/] Clausen asserts that some of the personal property cluttering the claim belongs to her deceased predecessor, and that she agrees it should be removed and returned to the family of the deceased.

determine the proper application of the regulations at 43 CFR Subpart 3715 in light of our decision in McColl and in conjunction with BLM trespass regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside and remanded in part.

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Lisa Hemmer
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge